Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review -	)	
Streamlined Contributor Reporting	)	
Requirements Associated with	)	
Administration of Telecommunications	)	CC Docket No. 98-171
Relay Service, North American Numbering	)	
Plan, Local Number Portability, and	)	
Universal Service Support Mechanisms.	)	
	)	
Telecommunications Services for	)	
Individuals with Hearing and Speech	)	
Disabilities, and the Americans with	)	CC Docket No. 90-571
Disabilities Act of 1990.	)	
	)	
Administration of the North American	)	
Number Plan and North American	)	CC Docket No. 92-237
Numbering Plan Cost Recovery	)	NSD File No. L-00-72
Contribution Factor and Fund Size.	)	
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

NASUCA'S
OPPOSITION TO PETITIONS FOR RECONSIDERATION

The National Association of State Utility Consumer Advocates ("NASUCA"),[1] hereby opposes the Petitions for Reconsideration filed by AT&T Corp. ("AT&T"), Nextel Communications Inc. ("Nextel"), SBC Communications Inc. ("SBC"), the United States Telecom Association ("USTA") and Verizon Wireless ("Verizon") regarding the December 13, 2002 Report and Order ("USF Contrib Mech R&O") in these dockets.[2] The Petitions for Reconsideration addressed here all seek reconsideration of one issue: the decision of the Federal Communications Commission ("Commission") to limit interstate carriers' USF line items on customers' bills to the percentage revenue assessment imposed on the carriers. USF Contrib Mech R&O, ¶¶ 45.[3]

NASUCA had argued that the Commission should forbid carriers from placing USF line items on customers' bills. See NASUCA Initial Comments (June 25, 2001) at 7-17. Yet the Commission's ruling was, from the consumer perspective, preferable to the carriers' proposals that they be allowed to include company-determined markups on USF line items (USF Contrib Mech R&O, ¶ 43, n. 120), as repeated in the Petitions for Reconsideration.

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[1] NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Chapter 4911, Ohio Rev. Code.

[2] Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-239 (rel. December 13, 2002).

[3] Petitions for Reconsideration were also filed by the National Exchange Carrier Association and WorldCom, Inc. Without conceding the validity of these petitions, NASUCA does not oppose them here. The Cellular Telecommunications Industry Association ("CTIA") submitted at least two *ex parte* communications (dated January 16 and 29, 2003) that address the issues in the AT&T, *et al*. Petitions for Reconsideration. The CTIA requests for "clarification" should have been filed as a Petition for Reconsideration. NASUCA opposes CTIA's "request" for that reason.

ARGUMENT

The importance of uniform USF line items is shown in the attached affidavit of Dr. Marc-David Seidel, Assistant Professor of Management at the University of Texas, McCombs School of Business, and a founder of A Bell Tolls, LLC. Dr. Seidel's affidavit shows clearly that consumers generally are confused by non-uniform line items on their bills (Seidel Affidavit at ¶¶ 7-10), contrary to, e.g., Verizon's claim (at 2, 5-6) that wireless customers are free of such concerns. In this respect at least, wireless customers' concerns are no different from wireline customers'.[4]

Verizon states that "the new rules hold little promise of bringing benefits to CMRS customers beyond those already brought by the market…." Verizon at 6. As Dr. Seidel explains, if regulatory fees are not built in to other rates, they should be explicit and uniform on customers' bills. Seidel Affidavit at ¶ 11. This will be a clear benefit to wireless consumers.

Verizon (at 3) and SBC (at 3, 7) opposed the adoption of the prohibition on markups as an interim measure, given the alleged cost of making the programming changes to accomplish the prohibition.[5] Verizon goes so far (at 4) as to argue that the costs are excessive because the Commission has already decided on a connection-based

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[4] Indeed, only a small percentage of wireless customers do not also subscribe to wireline service.

[5] The carriers' arguments on the cost of this one tweak for line items on bills speaks volumes about the cost of the massive restructuring required by any of the Commission's connection-based proposals.

mechanism. The lack of documentation is typical of such claims.[6] This raises the question whether forbidding line items would be a less expensive interim solution.[7]

SBC also says it needs to maintain its flat-rated line items because it cannot quickly convert to customer-specific percentages. SBC at 2.[8] Yet only a few months ago, SBC said it could convert to a connection-based mechanism -- fundamentally a more substantial change -- especially for business customers -- within one year. See SBC/BellSouth November 5, 2002 *ex parte*.

SBC proposes that the Commission "adopt a transitional line item requirement that gives carriers that currently assess flat-rated universal service line item charges limited flexibility to average such charges within customer categories." SBC at 8-9.[9] SBC does not explain how this is any different from what such carriers currently do.[10] On the other hand, USTA (at 4, 12-13) supports such averaging because of the difficulty of recovering USF contributions assessed on some services, such as presubscribed interexchange carrier change charges and the presubscribed interexchange carrier charge.

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[6] Other than the unsupported claim that 4,000 man-hours will be required in Ameritech territory alone. SBC at 6. If SBC's billing systems are so arcane that a change from a flat-rate charge to a percentage charge would require 40 programmers to work 100 hours each (2½ weeks!) just for Ameritech, then it is a wonder that anything gets done in the firm.

[7] Indeed, forbidding USF line items also solves Verizon's problem of determining specific customers' interstate revenues. See Order and Order on Reconsideration (rel. January 30, 2003) at ¶¶ 7-8.

[8] SBC says that the Commission should allow averaged line items in order to avoid a "flood of waiver requests." *Id*. A "flood" of one ILEC -- SBC -- saw fit to petition for reconsideration on this issue.

[9] SBC does not submit, for comparison purposes, the man-hour cost of implementing this transitional requirement.

[10] Notably, the ILECs' flat-rated universal service line item charges are based on the interstate SLC, a non-traffic-sensitive flat-rated line item itself. This is one instance where a universal service contribution line item is not based on usage, but this does not mean that the USF line item should represent anything but the percentage assessment levied on the ILEC for those interstate revenues. The SLC would be an exception to Dr. Seidel's recommendation that USF line items be based on usage. Seidel Affidavit at ¶ 12.

USTA overlooks the fact that this averaging results in some customers paying USF costs that should be assessed on other customers, which is antithetical to the reason for the prohibition on markups.

In another specialized plea, USTA at (2, 5-8) raises issues about limitations on price cap carriers' recovery of administrative costs. Yet this is only an issue where the carriers' rates are at the price cap ceiling, and there is no "headroom" to allow recovery through rates. It is difficult to muster much sympathy for the carriers that experience this problem.

Nextel asserts that doing without markups is "impractical, if not impossible for CMRS carriers to implement." Yet ILECs (at the very least) have passed through the 3% federal excise tax (without markups) for over a hundred years; Nextel's claims ring hollow. If it is impractical for CMRS carriers to impose surcharges without marking them up, then surcharges should be prohibited altogether.

AT&T does not oppose the prohibition on markups as an interim measure. AT&T, however, does ask the Commission to "clarify" that there may be a separate line item that includes USF-related administrative expenses. AT&T at 2.[11] USTA, on the other hand, would simply "clarify" the ban on markups by eliminating it altogether. See USTA at 8. Dr. Seidel's affidavit also shows the error in these views. Seidel Affidavit at ¶ 14.

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[11] AT&T phrases its request as one to ensure collection of "unbillables." *Id*. Yet the Commission has already rejected AT&T's request to give special treatment to "unbillables." USF Contrib Mech R&O at ¶ 56-57. Moreover, USF assessments are now to be based on "projections provided by contributors of their collected end-user interstate and international telecommunications revenues for the following quarter." *Id*. at ¶ 29. Allowing AT&T to project "collected" revenue while also including an adjustment for "unbillables" would result in an over-recovery of the USF assessment, exactly what the rule was intended to prevent.

AT&T also says that carriers should be allowed to round up multi-decimal-point contribution factors, because otherwise carriers will under-recover their assessments. AT&T at 6. AT&T's attempt to show why making consumers over-pay (by rounding up the factor) is more preferable (*id*.) is totally unconvincing. Indeed, in the US Contrib Mech R&O, AT&T gained an advantage that far outweighs any rounding problem: the ability to base assessments on projected rather than actual revenues. US Contrib Mech R&O, ¶ 29. Thus any shortfall created by rounding down rather than up will be able to be corrected when actual revenues are compared to the projections.

The USF line item restriction is not an unlawful imposition on commercial speech.

Verizon argues (at 9-12) that the prohibition on markups for USF line items is an unconstitutional imposition on commercial speech. Verizon is clearly wrong. Controls on bill line items -- determining how a cost can be recovered -- do not represent limitations on commercial speech. The constitutional test for restrictions on commercial speech is set forth in *Central Hudson Gas and Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980), and this prohibition is consistent with *Central Hudson*.

Central Hudson is applicable to laws that restrict commercial speakers' access to the public at large.[12] The Commission's prohibition on markups addresses the relationship between a carrier and its customers, those who have a tariffed or contractual relationship with the carrier. In principle, the prohibition on markups is no different from the

[12] 447 U.S. at 562.

requirement that credit card companies disclose the annual percentage rate charged on accounts.

Even if USF line items represent commercial speech, *Central Hudson* sets out a three-part test to determine the validity of a governmental restriction on lawful commercial speech.[13] First, the government must show a substantial interest in regulating the speech. Second, the restriction must directly and materially advance that interest. Third, the restriction must be no more intrusive than necessary to serve the interest.

As to the first prong of *Central Hudson*, it is clear that the government has an interest in ensuring that consumers receive an accurate accounting of the amounts added to their bills as a result of the USF.[14] It could not be clearer that the prohibition on markups advances that government interest, thus meeting the second prong. As to the third prong, the prohibition on markups is no more intrusive than necessary to serve the interest.

Any commercial speech rights asserted by carriers must be weighed against the rights of consumers to have accurate information about their accounts. The rights of carriers to the freedom of speech involved in indiscriminate pricing and labeling of line items on customers' bills should be secondary to the rights of consumers to the quiet enjoyment of their homes.

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[13] 447 U.S. at 565.

[14] That is, to the extent that carriers are permitted to have such line items. It would be preferable to bar these line items entirely. Seidel Affidavit at ¶ 11.

From the above, it is clear that Verizon's constitutional arguments must fail. The Commission should not let Verizon's arguments overturn the prohibition on markups of USF line items.[15]

Conclusion

Any action a carrier takes to collect revenues and remit taxes on that revenue generates "administrative costs," and these, like other expenses should be recovered in the rates charged for providing the service. The "administrative costs" passed through by the carriers are unaudited and may represent the carriers' attempts to shift other costs to a "universal service" category. Finally, adding these costs inflates the universal service contribution assessment factor, exacerbating the problem that brought the Commission to the SFNPRM. The Commission should reject the Petitions for Reconsideration.

Respectfully submitted,

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[15] Nextel raises a somewhat different question by asserting that the prohibition on markups violates a decade long policy not to regulate CMRS rates. Nextel at 9-17. The real question, however, is whether CMRS carriers -- or any other carrier -- should be able to single out this one cost for a line item. If carriers also had a line item for "CEO's salary," Nextel's position might make sense.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Petitions for Reconsideration was served by first class mail, postage prepaid, to the parties identified below this 27th day of February 2003.

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